

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. QWEST CORPORATION AND MCI WORLDCOM COMMUNICATIONS, INC., Respondents.	DOCKET NO. FCU-02-5 (C-02-22)
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**ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE DECISION
AND DENYING REQUEST FOR HEARING**

(Issued September 13, 2002)

On August 7, 2002, MCI WorldCom Communications, Inc. (WorldCom), filed notice with the Utilities Board (Board) that it filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code and asserted that any further proceedings in this action were stayed pursuant to 11 U.S.C. § 362(a).

On August 8, 2002, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to WorldCom's notice, asserting that this action falls within the exception to the automatic stay provision contained in 11 U.S.C. § 362(b)(4).

On August 22, 2002, the Administrative Law Judge (ALJ) issued an order stating that the automatic stay provision of 11 U.S.C. § 362(a) does not apply to this proceeding and that all orders previously issued in this proceeding (including the procedural order) remain in effect.

On September 6, 2002, WorldCom filed with the Board a request for interlocutory appeal of the ALJ's August 22, 2002, order and requested a hearing on the matter. In support of its request, WorldCom states that an interlocutory appeal in this matter is proper because awaiting final judgment before appealing the denial of the automatic stay would deprive WorldCom of a substantive right. In addition, WorldCom asserts that the ALJ erred in her analysis of the "public policy" and "pecuniary interest" tests under federal bankruptcy law and, therefore, WorldCom requested the Board reverse the decision of the ALJ and uphold the bankruptcy stay. WorldCom also requests that in the alternative of vacating the ALJ's decision, the Board should modify the ALJ's order to amend the previously-issued procedural order and allow WorldCom adequate opportunity to participate in the case in its own defense.

On September 10, 2002, Consumer Advocate filed a resistance to WorldCom's request for interlocutory appeal stating that the Board does not have the authority to grant interlocutory appeal. In addition, Consumer Advocate asserts that WorldCom can appeal the issue of the automatic stay to the Board after a decision is made on the merits of the case.

It is within the Board's discretion as to whether it should entertain interlocutory appeals from an order issued by an ALJ. The Board does not want to encourage the filing of interlocutory appeals, but understands that certain situations require intervention to serve the interests of justice. In this case, the issue regarding the applicability of the automatic stay provision of 11 U.S.C. § 362(a) is a legal question and one that does not require additional proceedings to evaluate. The applicability of the automatic stay provision is a matter involving significant rights that should be determined before the hearing on the merits to allow the Board to evaluate the protections afforded to WorldCom as a bankruptcy debtor. Therefore, the Board will address WorldCom's request for interlocutory appeal.

The Board has carefully reviewed the decision of the ALJ, the appeal filed by WorldCom, and Consumer Advocate's resistance to that appeal and finds the ALJ's decision is thoroughly researched and the analysis is sound. Therefore, the Board will deny WorldCom's interlocutory appeal of the ALJ's order regarding the automatic stay and directs these proceeding to continue. The Board recognizes that WorldCom has not submitted pre-filed testimony pursuant to the procedural order issued May 31, 2002, as it has been involved in a good faith attempt to resolve the bankruptcy stay issue. Therefore, the Board directs the ALJ to modify the procedural schedule in this proceeding so as to allow the parties an opportunity to fully participate.

IT IS THEREFORE ORDERED:

1. The interlocutory appeal of the Administrative Law Judge's "Order Regarding Bankruptcy Stay," issued August 22, 2002, and request for hearing filed by MCI WorldCom Communications, Inc., on September 6, 2002, is denied.
2. This proceeding is remanded to the Administrative Law Judge for adjudication on the merits.
3. The Administrative Law Judge is directed to modify the established procedural schedule to allow all parties to fully participate in these proceedings.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 13th day of September, 2002.